IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No.159 of 2006

Reserved on:16.11.2006.

Decided on:November 27, 2006

Oriental Insurance Company Ltd. …..Appellant.

VERSUS

Shakuntla & Anr. …..Respondents.

Coram

The Hon'ble Mr.Justice Deepak Gupta, Judge.

Whether approved for reporting?[1]No

For the Appellant: **Mr.Ashwani K.Sharma, Advocate.**

For the Respondents: **Mr.Gulzar Rathore, Advocate for respondent No.1.**

Mr.Parmod Thakur, Advocate for respondent No.2.

Deepak Gupta, Judge.

This appeal under Section 30 of the Workmen's Compensation Act is directed against the order dated 27.3.2006 of the Commissioner Workmen's Compensation Act, Theog whereby in case No.9/2004 he has awarded compensation of Rs.4,45,420/- and interest of Rs.89,084/- total Rs.5,34,504/- in favour of the claimants and has held the Insurance Company liable to pay the amount.

2. The appeal was admitted on the following substantial questions of law:-

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?Yes.***

1) Whether the claim petition filed by claimant under Workmen's Compensation Act against her father who is owner of vehicle (insured) is maintainable on account of the death of his brother (son of owner / insured) when the dependency of claimant and employment of deceased as workmen under the insured are not proved on record?

2) Whether risk of Beldar (labourer) was covered as per insurance policy issued by the insurer or was the same required to be statutorily covered in a jeep vehicle and whether the deceased was proved to be employed as beldar on the vehicle or the fatal injuries to deceased were proved to have occurred "by accident" and arising out of or during the course of his employment. If not, what is its effect?

3) Whether the insurer is not liable to deposit the amount on account of interest on compensation amount and whether impugned order awarding interest on compensation amount to the claimant is against the provisions of the Workmen's Compensation Act?

QUESTIONS No.1 & 2:

3. To decide both these questions, it would be appropriate to give the background of the case. Devi Singh son of Tula Ram is the owner of Tempo Trax vehicle bearing registration No.HP-06 A-237. This vehicle was insured with the appellant Insurance Company. An

accident of the vehicle took place on 8th July, 2004 in which three persons died. One of the persons who died in the accident was Anil Kumar son of Devi Singh (insured). The claim petition under Section 4 of the Workmen's Compensation Act was filed by Shakuntla daughter of Devi Singh and sister of Anil Kumar. According to her, she was dependent upon the deceased. Case set out was that the father Devi Singh had got re-married and after his re-marriage Anil Kumar and Shakuntla were living separately from their father and that Shakuntla was dependent upon the deceased.

4. However, no evidence whatsoever was led by claimant Shakuntla to show that she and her brother were living separately from the father. In fact, the ***Parivaar Register*** Ext.PW-3/B proved on record by the claimant herself clearly shows that the claimant as well as Anil Kumar were residing in the house of the father. Another factor to be noticed is that the claimant did not come to the Court with clean hands. In the claim petition it was not mentioned that she or the deceased were in any way related to Devi Singh. It was also not mentioned in the claim petition that they were living separately from their father. It was only when the Insurance Company in its defence took up the plea that Anil Kumar was not a labourer and was the son of respondent No.2 that in evidence such a plea was taken up. The evidence led is not at all in consonance with the pleadings. It is apparent that this petition has been filed by the claimant in connivance with her father, the owner of the vehicle. The claimant would have this Court believe that her father was not looking after her and that she and

her brother were residing separately but in the same village. No evidence has been led to show in which house they were living separately. No witness from the village has been produced to show that the claimant and Anil Kumar were residing separately from the father. Thus, it is clear that a cock and bull story was set up that the deceased Anil Kumar was living separately. If the relations of the deceased and his father were strained why would the father employ him? No doubt, the father Devi Singh has admitted each and every thing stated in the claim petition. He has, however, not produced any material on record to show that the deceased was employed with him. It is difficult to believe that the son of a person who owns a commercial vehicle and was a matriculate would be hired by this person not as a driver or a cleaner but as a manual labourer. In this case, keeping in view the relations between the claimant and the owner of the vehicle, it was the bounden duty of the Commissioner Workmen's Compensation to have scrutinized the evidence with greater care. If the Commissioner had done so, he would have realized that a totally false case has been set up with a view to get the money from the Insurance Company.

5. In view of the above discussion, I am of the considered view that neither deceased Anil Kumar was employed by his father Devi Singh nor was Shakuntla dependent upon him. As such, claimant Shakuntla was not entitled to any compensation under the Workmen's Compensation Act.

Question No.3:

6. In view of the fact that I have held that the claimant is not entitled to any compensation, this question need not be decided.

7. In view of the above discussion, the appeal filed by the Insurance Company is allowed. The award of the learned Commissioner is set aside and the claim petition filed by the claimant is dismissed. The Insurance Company may recover the awarded amount from the claimant as well as the insured.

(Deepak Gupta)
Judge.

November 27, 2006
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